Office Supreme Court U.S.
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JAMES H. McKENNEY,
Clerk

No. 475.

By. A. May for Appt. (on mo.)

UNITED STATES OF AMERICA, *ss:*

# Supreme Court of the United States.

**OCTOBER TERM, 1901.**

Filed Nov. 26, 1901.

*No. 475.*

GERHARD TERLINDEN, APPELLANT,

*vs.*

JOHN C. AMES, U. S. MARSHAL, ETC., APPELLEE.

## MOTION CONCERNING CUSTODY OF APPELLANT PENDING APPEAL.

And now comes the said appellant, Gerhard Terlinden, by Albert W. May and A. C. Umbreit, his attorneys, and moves the court to enter an order directing the appellee to detain in his possession and custody the appellant, under section 2 of rule 34 of this court and under section 765 of the Revised Statutes of the United States.

And for cause of said motion the appellant respectfully shows:

*First.* That he is now imprisoned and restrained of his liberty by John C. Ames, the appellee, marshal of the

United States for the northern district of Illinois, in the Cook County jail, in the city of Chicago, Illinois.

*Second.* That appellant is thus imprisoned and held in custody under color of the authority of the Constitution and laws of the United States relating to the return of fugitives from justice to foreign countries with which the United States has concluded treaties of extradition.

*Third.* That said John C. Ames, the appellee, claims to hold in custody and in prison the appellant under and by virtue of a certain warrant issued by Mark A. Foote, United States commissioner for the northern district of Illinois; which warrant was issued under the following circumstances:

On the fifteenth (15th) day of August, 1901, a complaint of Walther Wever, imperial German consul at Chicago, was presented to said commissioner, praying that a warrant might issue against appellant for the apprehension and commitment of appellant, in order that the evidence of his criminality might be inquired into, and that appellant might be extradited and delivered up to the justice of the Kingdom of Prussia; whereupon the said commissioner issued his warrant, and appellant was apprehended in the city of Milwaukee on or about the sixteenth (16th) day of August, 1901, by said appellee, and was thereupon by said appellee taken before said commissioner, and from thence taken to the county jail of the county of Cook and State of Illinois, where appellant has ever since been confined; that at the instance and request of the attorney for said imperial German consul the hearings before the commissioner were

continued from time to time, the last continuance being to the twenty-sixth (26th) day of September, 1901.

*Fourth.* That on said twenty-sixth (26th) day of September, 1901, the proceedings before said commissioner were dismissed on motion of the attorney for the German consul, and appellant, while still in the presence of said commissioner, was again arrested on said twenty-sixth (26th) day of September, 1901, upon another warrant issued by said commissioner, which said second warrant was issued by said commissioner upon a second complaint filed before said commissioner by said imperial German consul; that the said second complaint was presented to said commissioner on or about the twenty-fifth (25th) day of September, 1901, and the hearing upon said second complaint was continued by said commissioner.

*Fifth.* That afterwards, on the sixteenth (16th) day of October, 1901, appellant filed in the office of the district court of the United States for the northern district of Illinois a petition for a writ of *habeas corpus;* which said petition, amongst other things, averred that said imprisonment was illegal and without authority in law and in violation of the Constitution and laws of the United States, for the following reasons:

1. No treaty or convention for the extradition of fugitives from justice exists between the United States and the German Empire.

2. That the treaty or convention for the extradition of fugitives from justice concluded between the United States

and the Kingdom of Prussia on the 16th day of June, 1852, and ratified May 3, A. D. 1853, was terminated by the creation of the German Empire and the adoption of the constitution of said Empire in A. D. 1871, and that no treaty or convention for the extradition of fugitives from justice has been concluded between the United States, on the one part, and the Kingdom of Prussia or the German Empire, on the other, since said time.

3. Said complaint does not charge an extraditable offense under the provisions of the treaty of 1852, concluded between the United States and Prussia and other German States, were said treaty still in force and binding effect.

4. That appellant is not guilty of any extraditable offense under the provisions of said treaty of 1852, were said treaty still in force and of binding effect.

5. All proceedings had or attempted to be had before said commissioner under said complaint and warrant are illegal, void, and without authority in law, because said commissioner did not have jurisdiction over the person of this appellant.

*Sixth.* That thereupon the usual writ of *habeas corpus* was issued by his honor Christian C. Kohlsaat, judge of said district court, returnable on the twenty-first (21st) day of October, 1901, at 10 o'clock a. m. of said day; and afterwards, on said twenty-first (21st) day of October, the hearing was continued by said district court to the twenty-eighth (28th) day of October, 1901; and on said twenty-eighth (28th) day of October, amongst other proceedings had in

said court in this case, the further hearing was continued to the twenty-ninth (29th) day of October; and on said twenty-ninth (29th) day of October, 1901, the further hearing on said petition was continued to the thirty-first (31st) day of October, 1901; and on said thirty-first (31st) day of October, 1901, the further hearing was continued to the fifth (5th) day of November, 1901; and on said fifth (5th) day of November, 1901, the said writ of *habeas corpus* was discharged by said district court and appellant remanded to the custody of the marshal under the warrant of commitment issued by said commissioner.

*Seventh.* That thereafter appellant prayed for and obtained and perfected an appeal from the action of the district court aforesaid to the United States circuit court of appeals for the seventh judicial circuit; that after appellant had filed the record, briefs, and abstract in said court of appeals the attorney for the imperial German consul, representing the marshal, the appellee here, moved in said court to dismiss the appeal upon the ground that said appeal involved the question of the validity and construction of a treaty of the United States of America; that thereafter, on the fourteenth (14th) day of November, 1901, the said circuit court of appeals rendered an opinion by Judge Jenkins, presiding, holding that the jurisdiction of the circuit court of appeals was doubtful, and the said court, not feeling disposed to assume a doubtful jurisdiction, and especially as the question raised was an important one and involving international obligations and relations which should be peculiarly within the province of the Supreme Court, decided that in order to preserve the rights of the appellant and with re-

spect to the motion the said court would hold it in abeyance with a view to permitting appellant to take his appeal to the Supreme Court of the United States from the ruling below, and to take such other steps as he might be obliged to in order to protect his rights.

*Eighth.* Appellant further respectfully represents that no order concerning his custody was entered by the district court aforesaid.

*Ninth.* Appellant further respectfully shows to this court that subsequent to the issuing of the writ of *habeas corpus* by the district court aforesaid and prior to the fifth (5th) day of November, 1901, aforesaid, and notwithstanding that appellant, during the pendency of said *habeas corpus* proceedings, was in custody of the said district court under the writ of *habeas corpus* aforesaid, the said commissioner proceeded upon various days to hear testimony and deposition and receive evidence concerning the criminality of appellant; and on the fourth (4th) day of November, before the said *habeas corpus* proceedings had been determined by the said district court, the said commissioner made his finding and report and certified the same to the honorable the Secretary of State, at Washington, finding that the several charges of which the appellant was accused by the said imperial German government had been sustained, and recommending that the warrant for appellant's extradition to the authorities of the Kingdom of Prussia be issued.

*Tenth.* Appellant is now informed by the appellee that, upon the finding and report of the commissioner above

mentioned, the Secretary has issued the warrant of extradition and has placed the same into the hands of the imperial embassy at Washington, and that appellee is prepared to deliver the appellant over to the representatives of the imperial German government, and now appellant fears and apprehends that he will be delivered up by the appellee to the said imperial German government, thereby rendering nugatory his successful prosecution of this appeal and ineffectual the final order of this court.

Wherefore appellant respectfully prays that this honorable court may issue an order directing the appellee aforesaid to detain in his possession and custody the appellant until the final decision of this cause by this honorable court.

GERHARD TERLINDEN,
By ALBERT W. MAY,
*His Attorney.*

A. C. UMBREIT AND
ALBERT W. MAY,
*Attorneys for Appellant.*

UNITED STATES OF AMERICA, *ss:*

IN THE SUPREME COURT OF THE UNITED STATES.

GERHARD TERLINDEN, *Appellant,*
*vs.*
JOHN C. AMES, *U. S. Marshal, etc., Appellee.*

To VOCKE & HEALY,
*Attorneys for Appellee.*

GENTLEMEN: Please take notice that on Monday, the twenty-fifth (25th) day of November, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, I shall present to the honorable the judges of said court, in the court-room usually occupied by them, at Washington, District of Columbia, a motion, a copy of which is herewith served upon you.

At which time and place you may appear if you see fit.

Yours,

A. C. UMBREIT AND
ALBERT W. MAY,
*Attorneys for Appellant.*

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Received copy of above notice and copy November 22, 1901.

VOCKE & HEALY,
By WILLIAM MAUNHARDT.